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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/147,443	01/21/1999	ANDREAS MORELL	P63221US0	1730

7590 02/06/2004

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EXAMINER

VANDERVEGT, FRANCOIS P

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 02/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/147,443

Applicant(s)

MORELL ET AL.

Examiner

F. Pierre VanderVegt

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1644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-44 is/are pending in the application.
- 4a) Of the above claim(s) 33-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 03011999. 6) ☐ Other:

DETAILED ACTION

This application is a rule 371 continuation of PCT Serial Number PCT/EP97/03253.

Claims 1-21 have been canceled.

Claims 22-44 are currently pending.

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 22-32, in the Paper filed October 22, 2003 is acknowledged.

Applicant's election without traverse of the heavy chain species defined as SEQ ID NO: 58 is acknowledged. Upon further review the species requirement is withdrawn.

Applicant's election without traverse of the light chain species defined as SEQ ID NO: 60 is acknowledged. Upon further review the species requirement is withdrawn.

2. Claims 33-44 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the Paper filed October 22, 2003.

Accordingly, claims 22-32 are the subject of examination in the present Office Action.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 22 and 25-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Dziegiel et al (J. Imm. Meth. [1995] 182:7-19; AO on form PTO-1449 filed March 1, 1999).

Dziegiel teaches a purified polypeptide that binds to the rhesus D erythrocyte surface antigen (Abstract in particular). Dziegiel teaches that the polypeptide is an Fab fragment [claim 25] of an immunoglobulin comprising both V_H and V_L regions that specifically binds to Rhesus D antigen (page 10, paragraph bridging columns in particular)[claim 26]. Accordingly, the polypeptide satisfies the metes and bounds of the limitation in claim 22 that the polypeptide is "a functional variant" of SEQ ID NO: 58.

Applicant is reminded that the "function" of any antibody is to bind to an antigen. Accordingly, any

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antibody that binds to rhesus D antigen polypeptide satisfies the metes and bounds of the limitation "functional variant" in the claim. Dziegiel teaches that the antibody was engineered from a monoclonal human antibody of the IgG1 subclass (page 10, paragraph bridging columns in particular)[claim 27]. Dziegiel teaches that the nucleic acid sequences encoding the immunoglobulin fragment were obtained using standard methods (page 14, first paragraph of first column in particular)[claim 28]. Dziegiel teaches the formulation of the Fab polypeptides in phosphate-buffered saline, a pharmaceutically acceptable carrier (page 14, second paragraph of first column in particular)[claims 29-30]. Dziegiel teaches that the Fab can be used for typing rhesus D antigen (Table 4 in particular)[claims 31-32]. The prior art teaching anticipates the claimed invention.


Information Disclosure Statement

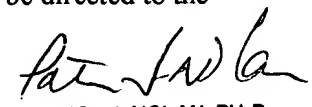
4. The information disclosure statement filed March 1, 1999 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. Copies of references AB-AM and AQ-AT were not provided and the citations thereof have been lined through on form PTO-1449 as not considered. Copies of references AA, AN-AP, AU and AV on form PTO-1449 have been received and marked as considered. Applicant should submit copies of references AB-AM and AQ-AT along with a new form PTO-1449 listing them for consideration in the present application.

Conclusion

5. No claim is allowed.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Pierre VanderVegt whose telephone number is (571)272-0852. The examiner can normally be reached on M-Th 6:30-4:00; Alternate Fridays 6:30-3:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached at (571) 272-0841. Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center number is (703) 305-3014. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

F. Pierre VanderVegt, Ph.D. 
Patent Examiner
January 29, 2004


PATRICK J. NOLAN, PH.D.
PRIMARY EXAMINER

2/5/04